

Additionally, all the Groups are classified in the same class and subclass for searching purposes. According to the MPEP:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent and distinct inventions. (MPEP §803 "Restriction -- When Proper").

All three groups contain a unifying technical aspect in that they all involve culturing bacterial cells that comprising nucleic acid encoding phage lysozyme, nucleic acid encoding the heterologous polypeptide, a signal sequence for secretion of the heterologous polypeptide, and separate promoters for each of the nucleic acid encoding the phage lysozyme and the nucleic acid encoding the heterologous polypeptide, wherein the promoters and culturing conditions are as indicated in step (a) of claim 1. Not surprisingly then, the claims of Group I are classified in class 435, subclass 69.1, as are the claims of both Groups II and III.

With respect to the search required to determine the patentability of the inventions defined by the claims of Group I-III, applicants represent that it is impossible to conduct an exhaustive search for a method for recovering refractile particles containing a heterologous polypeptide wherein bacterial cells are transformed with one expression vector without considering the art disclosing transformation with two vectors and the art disclosing use of bacterial cells wherein the nucleic acids are integrated into the genome rather than being in a vector. Similarly, the search for a two-vector culturing method or a culturing method where the nucleic acid is integrated into the genome is bound to reveal information concerning the same culturing method using one vector. Accordingly, performing the entire search covering all the ways to perform the method (which are just variations of each other) is less burdensome on the Examiner than the separate search, which necessarily involves duplication of searching efforts. Consequently, applicants respectfully submit that the search and examination of these three groups can be done without a serious burden on the Examiner.

In conclusion, applicants respectfully submit that the claims in Groups I-III do not represent distinct and independent inventions for the reasons set forth above. Further, there has been no *prima facie* showing of a serious burden on the Examiner that warrants separate examination of these three groups of claims. In fact, the shared classification and subclassification and resulting similar fields of search support applicants' view. Under MPEP §803, the Examiner must examine the groups on the merits under these circumstances.

In view of the foregoing arguments, applicants urge that the restriction requirement be withdrawn. If the Examiner has any questions, he should feel free to contact the undersigned attorney at the telephone number indicated below.

Respectfully submitted,
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